

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
NORTHERN DIVISION

UNITED STATES OF AMERICA,)
Plaintiff,)
vs.) CRIMINAL CASE NO. RDB-14-0186
RICHARD BYRD,)
Defendant.)
_____)

Thursday, February 9, 2017
Courtroom 5D
Baltimore, Maryland

BEFORE: THE HONORABLE RICHARD D. BENNETT, JUDGE

SENTENCING

For the Plaintiff:

James Warwick, Esquire
Kenneth Clark, Esquire
Assistant United States Attorneys

For the Defendant:

Michael Lawlor, Esquire
Nicholas Madiou, Esquire

Also Present:

Lisa Spinnichio, U.S. Probation Officer
Damon Gasque, Paralegal, U.S. Attorney's Office

Reported by:

Douglas J. Zweizig, RDR, CRR
Federal Official Court Reporter
101 W. Lombard Street, 4th Floor
Baltimore, Maryland 21201

P R O C E E D I N G S

(3:12 p.m.)

THE COURT: Good afternoon, everyone.

This is calling the case of United States versus Richard Byrd, Criminal No. RDB-14-0186. The defendant pled guilty before me on November 2nd of last year pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure as to both counts of the second superseding indictment, and we are now here for sentencing.

All the members in the back can be seated. Thank you.

If counsel would identify themselves for the record, please.

MR. WARWICK: For the United States, James Warwick and Kenneth Clark. And also at counsel table our paralegal, Damon Gasque.

THE COURT: Yes. Mr. Warwick, nice to see you. Mr. Clark and Mr. Gasque, nice to see you. Usually you're running the whole computer system for the whole courtroom, so it's nice to see you.

And on behalf of the defendant?

MR. LAWLOR: Good afternoon, Your Honor. Michael Lawlor and Nicholas Madiou for Mr. Byrd. He's present, Your Honor.

THE COURT: Good afternoon to you, Mr. Lawlor and Mr. Madiou.

1 And, Mr. Byrd, good afternoon to you.

2 The Government may be seated.

3 We just have a preliminary matter, I think, but we'll
4 see on this. We have a preliminary matter in that there was a
5 pleading filed at 8:17 last night in the evening on the
6 electronic case filing system of this Court, Paper No. 408. It
7 was entitled "Motion to Clarify November 1st, 2016 Hearing
8 Record and Enjoin a Manifestly Unjust Guilty Plea."

9 And it was filed by Mr. Vandy L. Jamison, Jr., a
10 member of the Bar of this court, who sought to enter his
11 appearance on November 1st, prior to the scheduled trial date
12 of November 7th, with the representation that he would not be
13 prepared to start the case -- to try the case six days later.
14 And I denied his entry and he is not counsel of record in this
15 case, nor is he a party to this case.

16 But it occurs to me that I need to first verify or
17 discuss or determine if this paper was filed at the behest of
18 Mr. Byrd or if Mr. Byrd adopts this document.

19 Mr. Lawlor.

20 **MR. LAWLOR:** Your Honor, let me have your indulgence
21 in a moment. But initially I will say, obviously I was as
22 surprised, as I'm sure Your Honor was, to see that pleading. I
23 have not heard from Mr. Jamison since we were in court six days
24 before trial the Court -- Your Honor just referenced.

25 I did ask Mr. Byrd about it today. I saw Mr. Byrd

1 yesterday at the jail, just to go over some things and prepare
2 for today's hearing. So there was no mention of Mr. Jamison or
3 another attorney at that time.

4 Obviously, I got the pleading after-hours last night,
5 saw Mr. Byrd today. He has not had contact with Mr. Jamison,
6 was not aware of the pleading, did not direct its filing.

7 **THE COURT:** And he does not adopt it?

8 **MR. LAWLOR:** With that, Your Honor, your indulgence.

9 (The defendant conferred with counsel.)

10 **MR. LAWLOR:** Your Honor, Mr. Byrd indicates to me that
11 he does adopt it, although I believe five minutes ago was the
12 first time that he saw the pleading. But that's --

13 **THE COURT:** So he's saying that he adopts the
14 pleading?

15 **MR. LAWLOR:** That is the indication he has made.

16 **THE COURT:** All right. If you'll please stand,
17 Mr. Byrd.

18 You have read this document, apparently you've
19 indicated to your lawyer, for the first time five minutes ago?

20 **THE DEFENDANT:** Yes.

21 **THE COURT:** You have to pull the microphone closer and
22 speak up, please.

23 And in adopting it, I interpret it as your seeking to
24 withdraw your plea of guilty; is that correct?

25 **THE DEFENDANT:** I've been seeking to do that since the

1 day I --

2 **THE COURT:** Why don't you pull the microphone closer
3 to you and speak up, sir.

4 **THE DEFENDANT:** I've been seeking --

5 **THE COURT:** You don't have to bend over now. I can
6 hear you. Just keep your voice up.

7 **THE DEFENDANT:** I've been seeking to do that since the
8 day I accepted the plea in here, Your Honor.

9 **THE COURT:** Okay. All right. Well, there's been no
10 motion filed to withdraw the guilty plea. And what is the --
11 and if you recall, when you pled guilty before me on
12 November the 2nd, you were placed under oath.

13 And indeed I specifically asked you, I said,
14 "Mr. Byrd, do you understand that you are now under oath and
15 that if you answer any of my questions falsely, your answers
16 may later be used against you in another prosecution for
17 perjury or for making false statements?"

18 Do you recall my asking you that?

19 **THE DEFENDANT:** Yes, Your Honor.

20 **THE COURT:** And you said that you understood that, and
21 you took an oath. And then a detailed statement of facts was
22 presented as reflected in the plea agreement which you signed,
23 which was introduced as Government's Exhibit 1 at the time of
24 your guilty plea in Paragraph 6A on Pages 5 and 6 of the plea
25 agreement which you signed. And that was introduced as a

1 Government exhibit. And you stated under oath that they were
2 the correct facts, because I required a factual predicate for
3 this Court's acceptance of your guilty plea.

4 Do you recall that?

5 **THE DEFENDANT:** Yes, Your Honor, I recall us going
6 over that document.

7 **THE COURT:** All right. So -- but your position is now
8 that you want to withdraw your plea of guilty?

9 **THE DEFENDANT:** My position has been since the day of
10 the plea to withdraw my plea. I've communicated this to my
11 lawyer on numerous occasions.

12 **THE COURT:** Okay. All right. What is the basis of
13 your wanting to withdraw your plea of guilty, an assertion of
14 innocence on your part? Is that correct?

15 **THE DEFENDANT:** Yes, Your Honor.

16 **THE COURT:** All right. Okay. Any other basis for it?

17 **THE DEFENDANT:** Yes, Your Honor.

18 **THE COURT:** Okay. What is the other basis?

19 **THE DEFENDANT:** The other basis for withdrawing my
20 will -- the guilty plea is my plea was not made of my own free
21 will.

22 **THE COURT:** Okay. And so I recall also asking if
23 anybody had -- in my colloquy under Rule 11 of the Federal
24 Rules of Criminal Procedure, I specifically asked you as well
25 if anyone has actually tried to force you or threaten you to

1 plead guilty in this case. And you indicated, "no," no one
2 had.

3 And I asked, "Are you pleading guilty on your own
4 freely and because you are, in fact, guilty of Count 1 and
5 Count 2?"

6 And you said "yes," you were.

7 Do you recall that?

8 **THE DEFENDANT:** I think -- I think I recall that.

9 **THE COURT:** Okay. And, again, you were under oath.
10 But now you've indicated that you felt that someone was
11 pressuring you to plead guilty; is that correct?

12 **THE DEFENDANT:** No, I don't feel. I know I was.

13 **THE COURT:** Okay. All right. Any other basis for
14 your seeking to withdraw your plea of guilty?

15 **THE DEFENDANT:** I don't understand what you mean,
16 "basis."

17 **THE COURT:** I'm sorry?

18 **THE DEFENDANT:** I don't understand, what do you mean
19 by "basis."

20 **THE COURT:** I'm just asking: What other basis do you
21 present to the Court to argue that you should be permitted to
22 withdraw your plea of guilty? You're asserting your innocence
23 and essentially disputing the statement of facts to which you
24 agreed under oath on November the 2nd, and I'm asking if
25 there's any other basis. You've indicated that you were

1 pressured into pleading guilty; is that right?

2 **THE DEFENDANT:** Yes, Your Honor. That's one of the
3 issues.

4 **THE COURT:** Okay. What other basis is there?

5 **THE DEFENDANT:** Your Honor, on the day of the plea or
6 the day before the plea, Mr. Jamison showed up in court and
7 showed up at the holding cell to speak to me. I thought
8 Mr. Jamison was going to be able to get on the case.

9 Anyhow, Your Honor indicated that I manipulated the
10 situation and, therefore, ruled that Mr. Jamison was not going
11 to be able to get on the case.

12 But --

13 **THE COURT:** Well, I think correctly, Mr. Byrd, I
14 indicated Mr. Jamison -- given the fact that we had -- that you
15 had your third court-appointed lawyer and that the trial of
16 this case had been postponed some five times before, that I
17 asked him if he was going to be able to be ready for trial the
18 following Monday, November the 7th. And he said, no, he would
19 not be.

20 **THE DEFENDANT:** Okay. No problem. I stand corrected.

21 **THE COURT:** The record will reflect that Mr. Jamison
22 never entered his appearance in this court -- in this case,
23 never has.

24 **THE DEFENDANT:** Yeah. He was never allowed to.

25 **THE COURT:** He orally sought to come in. And I asked

1 him if he was prepared -- given the number of times you'd
2 sought a postponement, I asked him if he was prepared and was
3 ready to go to trial the following Monday.

4 And he indicated, no, he was not, because he was in
5 court before me on November the 1st. So that's where we were
6 on that.

7 **THE DEFENDANT:** Okay. I don't understand all the
8 legal jargon. But if Your Honor would just allow me to finish
9 where I'm going, I'd greatly appreciate it.

10 **THE COURT:** Sure. Go right ahead.

11 **THE DEFENDANT:** I had no phone privilege for some
12 time, Your Honor. Your Honor released my phone privileges so I
13 can call the lawyers.

14 I was able to start calling lawyers on September 31st.
15 I think Mr. Lawlor contacted the facility after I wrote him and
16 let him know that my phone privileges for calling attorneys was
17 never back.

18 On sometime September to October, I contacted
19 Mr. C. Justin Brown to try to retain him.

20 Shortly after, I got a letter from -- a letter from
21 Mr. Brown saying that he has a conflict of interest. I was
22 able to get back on the phone around the 14th or the 15th to
23 speak to Mr. Brown about it, his conflict.

24 At that point I proceeded to try to hire Mr. Jamison.

25 I made contact with Mr. Jamison. My mother made

1 preparations to hire him. I made Mr. Lawlor aware of all of
2 the movements I was making. He, himself, tried to contact
3 Mr. Jamison several times. He told me to find out what was the
4 status because I wasn't able to get on the phone to find out
5 what was going on.

6 The last time I spoke to Mr. Jamison was -- prior to
7 the hearing was when me and him agreed upon him getting with my
8 mother to figure out the retainment.

9 That was two weeks or a week or so prior to him
10 showing up at court.

11 I used the same allotted amount of time that
12 Your Honor used to hire counsel here today for me.

13 **THE COURT:** Actually, for the record, Mr. Byrd, I
14 don't hire lawyers. The Criminal Justice Act Coordinator does,
15 despite Mr. Jamison's representation here in his pleading that
16 he filed and which we'll deal with in another setting at some
17 other time. I don't hire the lawyers. The lawyer is selected
18 by the Criminal Justice Act Coordinator, as lawyers who are
19 members of the Bar of this court are aware. And Mr. Lawlor is
20 the third lawyer from that panel who was appointed to represent
21 you.

22 **THE DEFENDANT:** Okay.

23 **THE COURT:** So, no, I don't hire the lawyer. The
24 court -- the clerk of the court, you know, finds the lawyer who
25 is on the Criminal Justice Act Panel. And then there's an

1 order entered permitting him to come in, but I didn't pick up
2 the phone. I didn't go hire Mr. Lawlor.

3 **THE DEFENDANT:** Well, I took that from when you told
4 me you hired Mr. Solomon, so I was -- I didn't know that you
5 didn't hire them. I don't know the process.

6 **THE COURT:** I never said I hired Mr. Solomon,
7 Mr. Byrd. He was the second of your court-appointed lawyers
8 who was appointed --

9 **THE DEFENDANT:** Okay.

10 **THE COURT:** -- whom you sought to discharge.

11 **THE DEFENDANT:** Anyhow, Mr. Jamison showed up here the
12 day after that hearing. On the day of the hearing, I spoke to
13 him, he was supposed to enter his appearance. However that
14 process work, I don't know.

15 But, anyhow, it turned into a total excoriation of him
16 and me about him, whatever process he didn't take and supposed
17 to do, and me supposedly had -- manipulating the Court's
18 docket.

19 At that point me and Mr. Lawlor engaged in a lengthy
20 battle back and forth about accepting the plea agreement.
21 After being pressured and bullied and forced verbally and
22 Mr. Lawlor statin' to me that, Listen, as of today, now I'm
23 your lawyer, because prior to that, I didn't know if you was
24 going to have counsel in; so, therefore, I had one foot in, one
25 foot out, so we're not prepared to go to trial next week. So

1 there's no way you going to be able to go to trial and be
2 prepared, and this judge is not going to move the calendar.
3 And you see the judge's posture, and you see how the judge feel
4 about you. So it's not going to happen.

5 And a lot of other comments took place during that
6 conversation that I don't want to air out in public, but at
7 which point I felt severely pressured and bullied to take the
8 plea, at which point I agreed. I said, "Okay. Fine."

9 **THE COURT:** All right. Well, thank you very much,
10 Mr. Byrd.

11 Let me just go over the posture here in terms of
12 treating the motion that was filed by Mr. Jamison, a member of
13 the Bar of this court, whose appearance is not in the case. He
14 didn't list his Bar number here, but he's a licensed lawyer and
15 he's a member of the Bar of this court, and stated certain
16 personal attacks upon me, which are of really no moment to me,
17 and personal attacks upon Mr. Lawlor.

18 I'm treating this -- I received no notice of it until
19 apparently it was filed at 8:17 last night. And I'll treat
20 this -- your adoption of this motion, I'm treating it as a
21 motion to withdraw your guilty plea. And it will be treated as
22 a motion under Rule 11(d) of the Federal Rules of Criminal
23 Procedure to withdraw your guilty plea.

24 Let me just sort of summarize for you, Mr. Byrd, and
25 the history of this case so the record is clear.

1 You initially appeared in this court in June of 2014
2 as to the first indictment. And you were represented by
3 Mr. Kenneth Ravenell, an attorney, privately retained,
4 Mr. Ravenell.

5 Ultimately, there was an attorney inquiry in the fall
6 of 2014, at which time it was determined you needed
7 court-appointed counsel.

8 And in October of 2014, there was the entry of the
9 appearance of William Brennan and William Mitchell, as
10 reflected in the file. And by agreement of the parties in
11 January of 2015, there was a trial date scheduled for July 6th
12 of 2015.

13 There was later an agreement by the parties, at your
14 request of counsel, for extension of the trial date until
15 November 30th, 2015, as reflected by an order in June of 2015.

16 Then in October of 2015, you expressed dissatisfaction
17 with Mr. Brennan and Mr. Mitchell. And there was an attorney
18 inquiry, and you asked that I continue the trial date. And I
19 granted that request in October of 2015, so the trial date was
20 scheduled for April 18th, 2016.

21 In the interim, the law firm of Perkins Coie was
22 permitted to inquire about representing you. And we conducted
23 a -- we were prepared to conduct a hearing under the case of
24 United States versus Farmer with respect to your access to
25 certain assets to retain private counsel.

1 And I accorded those attorneys, Mr. Jean-Jacques Cabou
2 and Alexis Danneman, the courtesy of entering their appearance
3 for the limited purpose of seeking to represent you with the
4 understanding that I would not require them to stay in the case
5 if those assets were not freed for you to be able to retain
6 private counsel.

7 Ultimately, they withdrew that request, and I
8 permitted them to withdraw from the case.

9 There was then an attorney inquiry as to Mr. Brennan
10 and Mr. Mitchell, the first of your court-appointed lawyers,
11 because you were not satisfied with their services, so the
12 trial date was then postponed until July of 2016, and
13 David Solomon appeared as the second court-appointed lawyer in
14 the case on April 28th, 2016.

15 And at that time a new trial date was then scheduled
16 for September of 2016 at your request. In July you -- in July
17 of 2016, you then suggested that you might want to represent
18 yourself. But on July 27th of 2016, you withdrew that request.

19 There was a motions hearing held in August of 2016 at
20 which there were certain rulings against you in terms of
21 motions filed.

22 You then filed a request for an attorney inquiry as to
23 David Solomon, indicating your dissatisfaction with Mr. Solomon
24 as the court-appointed lawyer, and a new trial date was
25 scheduled for November the 7th.

1 Mr. Michael Lawlor was then appointed by the Court of
2 this court to represent you as court-appointed counsel. And
3 over Government objection, I agreed on September 15th to
4 postpone the trial date yet again.

5 So then Mr. Lawlor appeared as the third
6 court-appointed lawyer for you.

7 The case was scheduled for trial on November the 7th.

8 On November the 1st, we had a pretrial conference with no
9 communication, no entry of appearance of any kind at all.

10 Mr. Jamison arrived here at the court, sat at trial table. And
11 with respect to my inquiry as to whether he was prepared to go
12 forward at trial on November the 7th, he indicated that he was
13 not.

14 Based upon that, I indicated to him that he could not
15 enter his appearance, and the trial date remained firmly set
16 for November the 7th.

17 The next day, on November 2nd, 2016, you indicated to
18 the Court that you wanted to plead guilty. And I went through
19 a very thorough Rule 11 colloquy with you, and indeed you were
20 entering your plea under Rule 11(c)(1)(C) with an agreed
21 disposition. And the proceedings proceeded in that fashion,
22 and I placed you under oath and you pled guilty.

23 There was no indication of any kind from November
24 the 2nd, 2016, when you pled guilty until 8:17 p.m. last night
25 that there was any issue with this case going forward. There

1 was no indication by you that you wanted to withdraw your plea
2 of guilty. There was no indication by Mr. Jamison --

3 **THE DEFENDANT:** That's absolutely false, Your Honor.

4 **THE COURT:** Well, there's none that the record
5 reflects.

6 **THE DEFENDANT:** You told me specifically not to write
7 you or inform you of anything. I wrote my lawyer and informed
8 him, and I told him in person of that.

9 **THE COURT:** Well, all I'm saying --

10 **THE DEFENDANT:** He has several and numerous letters
11 from me, certified and uncertified --

12 **THE COURT:** Fine. Mr. --

13 **THE DEFENDANT:** -- that I informed him of -- to
14 withdraw my guilty plea.

15 **THE COURT:** I hear you, Mr. Byrd.

16 The Court was not aware of any difficulties --

17 **THE DEFENDANT:** Because the Court wished not to be
18 aware because the Court told me not to write you about it.

19 **THE COURT:** I told you, Mr. Byrd, that over the course
20 of two years of this case, seeking lawyer after lawyer, that
21 you should not be submitting pro se submissions that might be
22 detrimental to you when you'd file those and that you were
23 potentially waiving certain privileges.

24 The simple fact of the matter is at 8:17 last night,
25 Mr. Johnson [sic] then filed what is Paper No. 408, which I'm

1 treating as a motion to withdraw your plea of guilty.

2 Rule 11(d) of the Federal Rules of Criminal Procedure
3 specifically provides that a moving defendant must show a fair
4 and just reason why a withdrawal of a guilty plea should be
5 allowed, as the Fourth Circuit has noted in United States
6 versus Ubakanma, U-B-A-K-A-N-M-A, 215 F.3d 421, a
7 Fourth Circuit opinion in 2000.

8 The criteria under Fourth Circuit law are
9 well-established with respect to a defendant seeking to
10 withdraw a plea of guilty.

11 In United States versus Moore, at 931 F.2d 245, the
12 Fourth Circuit Court of Appeals in 1991 noted that there are
13 six factors to be considered.

14 One is whether the defendant provides credible
15 evidence that a plea of guilty is not knowing or voluntary.

16 Two, whether Defendant credibly asserted his legal
17 innocence.

18 Three, whether there was a delay between entering the
19 plea and moving for a withdrawal.

20 Four, whether Defendant had close assistance of
21 competent counsel.

22 Five, whether withdrawal -- whether withdrawal will
23 prejudice the Government.

24 And, six, whether or not withdrawal will inconvenience
25 the Court and waste judicial resources.

1 The Court notes for the record and for purposes of
2 appeal, when you appeal this case, Mr. Byrd, that you have more
3 than played with the docket of this court. The record is
4 abundantly clear on numerous occasions that you have found
5 fault with any lawyer who's appointed for you and then on the
6 eve of trial have sought delay or dilatory tactics.

7 And that was quite clear before the Court in September
8 when, at the chagrin of the Government, which had scheduled
9 witnesses, just a week or two before the September trial date,
10 I once again allowed the case to be rescheduled for November
11 the 7th. And I granted you the -- for the third time a third
12 court-appointed lawyer.

13 The United States Court of Appeals for the
14 Fourth Circuit in United States versus Bowman at 348 F.3d 408,
15 a Fourth Circuit opinion in 2003, applied those Moore factors
16 and noted and upheld the denial of a motion to withdraw a plea
17 of guilty where, most significantly, the defendant claimed to
18 have essentially lied repeatedly during the Rule 11 colloquy.
19 And certiorari was denied by the Supreme Court in that case in
20 540 U.S. 1226 in 2004.

21 Essentially, what you're representing before the Court
22 now is that under oath you lied; that you didn't acknowledge
23 the very detailed statement of facts that the Court required
24 the Government to proffer in order to accept the plea of
25 guilty.

1 The Court further finds that you don't satisfy any of
2 the criteria under United States versus Moore in terms of
3 credible evidence that your plea is not knowing or voluntary.
4 The record is abundantly clear in terms of your trifling with
5 this matter over a period of almost two years and taking any
6 maneuver possible on the eve of trial to continue to delay.

7 Secondarily, with respect to your credible assertion
8 of your legal innocence, in light of the detailed proffer to
9 support the guilty plea back on November the 2nd and your
10 statement under oath with respect to acknowledging those facts,
11 you have not credibly asserted your legal innocence before the
12 Court today.

13 In terms of whether there was a delay between entering
14 the plea and moving for withdrawal, this record is abundantly
15 clear with respect to the steps you've taken throughout these
16 entire proceedings, going through no less than three
17 court-appointed lawyers.

18 Furthermore, in terms of whether or not you've had
19 close assistance of competent counsel, William Brennan and
20 William Mitchell were competent counsel, but I allowed you to
21 discharge them.

22 David Solomon is competent counsel, but I allowed you
23 to discharge him.

24 Mr. Michael Lawlor is competent counsel, and he's
25 appeared in front of me numerous times. And now you seek to

1 discharge him.

2 Sooner or later, this rotation has to stop, Mr. Byrd.

3 And in terms of the fifth criterion, whether
4 withdrawal will prejudice the Government, it goes without
5 saying that the Government, on numerous occasions, has been
6 ready for trial and on numerous occasions you have played this
7 maneuver.

8 And, finally, whether withdrawal will inconvenience
9 the Court and waste judicial resources, I cannot imagine a more
10 clear case of a defendant who is seeking to inconvenience the
11 Court and waste judicial resources.

12 So for those reasons set forth on the record,
13 Paper No. 408, filed by Lawyer Vandy Jamison, is treated as
14 your motion adopted by you here today to withdraw your plea of
15 guilty. And it is denied for the reasons indicated on the
16 record.

17 And with that, we will proceed to sentencing in this
18 case.

19 **THE DEFENDANT:** Why don't you tell the judge why I
20 took the guilty plea.

21 **THE COURT:** All right. That -- I've already ruled,
22 Mr. Lawlor. You can talk to your client, if you want.

23 (The defendant conferred with counsel.)

24 **MR. LAWLOR:** Your Honor, can the Government and I
25 approach?

1 **THE COURT:** No. I'm not sure about that, Mr. Lawlor.
2 I'm not going to have to have a sealed proceeding here. He's
3 got to have a headset get down -- for him and we need to
4 discuss it --

5 **MR. LAWLOR:** I think it's important for the record,
6 Your Honor. I think it's a matter that should be under seal.

7 **THE COURT:** That's fine. We can put it under seal.
8 But I'm not going to have you come up until we give him a
9 headset.

10 **MR. LAWLOR:** Yes, of course.

11 **THE COURT:** Mr. Byrd, you're going to have a headset
12 here, and there's going to be a discussion up here at the
13 bench, and you'll be able to hear it. And I'll have you
14 confirm that you can hear it before I take the discussion at
15 the bench.

16 (Bench conference mode activated.)

17 **THE COURT:** Can you hear me, Mr. Byrd?

18 **THE DEFENDANT:** (Nods head.)

19 **THE COURT:** With that, the record reflect that
20 Mr. Byrd said he could hear me.

21 Mr. Byrd, you'll sit down now, please, sir.

22 Counsel will approach the bench. This matter will be
23 under seal.

24 (Sealed bench conference.)

25 **THE COURT:** All right. That discussion was held under

1 seal, and it does not in any way affect the Court's ruling and
2 the failure of the defendant to satisfy the factors under the
3 Moore case and the motion to withdraw the guilty plea.
4 Essentially it's treated -- it's a verbal motion today, treated
5 as a motion to withdraw the guilty plea in terms of verbally
6 adopting the submission of Mr. Jamison, Paper No. 408, which as
7 I've said, according to the court records, was filed at
8 8:17 p.m. last night, last evening.

9 And so with that, we are ready to proceed with
10 sentencing in this case.

11 If you'll please stand, Mr. Byrd.

12 You pled guilty before me under Rule 11(c)(1)(C) of
13 the Federal Rules of Criminal Procedure with an agreed sentence
14 with the Government, specifically a sentence of 26 years or
15 312 months on Count 1, conspiracy to distribute and possess
16 with the intent to distribute cocaine and marijuana, and
17 10 years or 120 months on the money-laundering charge in
18 Count 2, 18 United States Code, Section 1956(h), for a total
19 sentence of 26 years or 312 months, which you will definitely
20 get credit for time served in federal custody since April of
21 2014 for that. So you've already served some -- well over two
22 and a half years already on that sentence.

23 I indicated to you at that time that after I reviewed
24 the presentence report prepared by Ms. Lisa Spinnichio, the
25 U.S. Probation Officer, who's here in court -- good afternoon,

1 Ms. Spinnichio.

2 **THE PROBATION OFFICER:** Good afternoon, Your Honor.

3 **THE COURT:** I didn't get a chance to say hi to you.
4 Thank you for your report.

5 I indicated to you at that time on November the 2nd,
6 Mr. Byrd, that if I was inclined to sentence you to one day
7 more than that, you would be permitted to withdraw your plea of
8 guilty.

9 And pursuant to Rule 11(c)(1)(C), if I was inclined to
10 sentence you to one day less than that, then the Government
11 would be permitted to withdraw your plea of guilty. And that
12 was to the two-count, second superseding indictment, Counts 1
13 and 2.

14 Correct, Mr. Warwick?

15 **MR. WARWICK:** That is correct, Your Honor.

16 **THE COURT:** Correct, Mr. Lawlor?

17 **MR. LAWLOR:** Yes, Your Honor.

18 **THE COURT:** And I have reviewed Ms. Spinnichio's
19 presentence report, and there won't be any surprises here
20 today. That will be the sentence.

21 But we have a lot of housekeeping to do here,
22 including Mr. Lawlor's objection to one portion of the
23 presentence report that would change the guideline, the
24 Advisory Guideline calculation.

25 So with that, we are ready to proceed with this

1 plea -- with this sentencing in terms of the basis for the
2 Court sentencing you to a total of 312 months, or 26 years in
3 federal prison.

4 Now, Mr. Byrd, have you reviewed the presentence
5 report in this case with Mr. Lawlor?

6 **THE DEFENDANT:** There were some changes supposed to be
7 made. I haven't seen those yet.

8 **THE COURT:** Yes. I'm going over that with you now.
9 But you've reviewed that with him?

10 **THE DEFENDANT:** Yes.

11 **THE COURT:** All right. Now, the changes -- first of
12 all, the defendant objected to the presentence report,
13 Paper No. 307. And I would note of the two matters raised
14 there, one of them is now moot, I believe, Mr. Lawlor. You
15 contended that there were two points incorrectly added to the
16 defendant's criminal history score, and I believe that
17 correction has now been made; correct?

18 **MR. LAWLOR:** Yes, Your Honor.

19 **THE COURT:** Correct, Ms. Spinnichio?

20 **THE PROBATION OFFICER:** Yes, Your Honor.

21 **THE COURT:** Okay. And then you noted that --
22 Mr. Lawlor, you also noted Mr. Byrd's objection to a two-level
23 upward adjustment based on obstruction of justice under
24 Section 3C1.1 of the Advisory Guidelines based upon alleged
25 efforts by Mr. Byrd to contact the co-defendant, James Bowie.

1 That is a guideline issue that we will be addressing shortly in
2 terms of that issue, although I'm not certain the Government is
3 opposing that, but we'll get to that in a moment.

4 And, also, I note that there are certain other
5 corrections or objections we'll be going over in a second in
6 terms of additions here that were submitted in Paper No. 407.

7 **MR. LAWLOR:** Those are more cosmetic, Your Honor.

8 **THE COURT:** I'm sorry?

9 **MR. LAWLOR:** Those are more cosmetic.

10 **THE COURT:** Well, one of them is not cosmetic, and I
11 want to go over it in a second.

12 Mr. Warwick, does the Government have any objections
13 or corrections to the report?

14 **MR. WARWICK:** No, Your Honor.

15 **THE COURT:** All right. As to the defense objections,
16 we're going to be addressing the matter of the obstruction of
17 justice as to -- with respect to other objections or
18 corrections noted in Paper No. 407 by the defense counsel.

19 Paragraph 35, the presentence report lists a
20 conviction that Mr. Byrd denies obtaining. And then your
21 review of the Maryland Case Search did not reveal any such
22 case.

23 Has that correction been made, Mr. Lawlor?

24 **MR. LAWLOR:** No, Your Honor. I talked to the PSR
25 author today. She indicated that she has paperwork indicating

1 that Mr. Byrd did obtain that conviction under a different
2 name. So I -- as I said, my research didn't show any such
3 conviction by Mr. Byrd. He denied to me that he received such
4 a conviction.

5 With that, Your Honor, I'd leave it to Your Honor or
6 the probation author.

7 **THE COURT:** All right. Well, it doesn't affect the
8 guideline -- it was an assault in the second degree with
9 probation before judgment in the state system, according to
10 Paragraph 35.

11 Correct, Mr. Lawlor?

12 **MR. LAWLOR:** Yes, Your Honor.

13 **THE COURT:** And even if that criminal history point of
14 one is not added, it doesn't affect -- it does not appear. It
15 does not affect the criminal history calculation with the
16 Advisory Guideline.

17 **MR. LAWLOR:** No; because he would still have four
18 points, which would still render him a Category III.

19 **THE COURT:** Right. Mr. Warwick, I don't see any
20 reason for the record to be muddled on this issue. I mean, the
21 defendant contends that that's not accurate. It was a
22 probation before judgment, which has the legal status at some
23 point in time of sometime being erased if someone complies.
24 There is an assertion that it was the same individual, but it
25 really has no significance in terms of what's happening here

1 today.

2 **MR. WARWICK:** None whatsoever.

3 **THE COURT:** All right. I'm just going to treat it as
4 zero. I'll sustain that objection by the defense.

5 And, Ms. Spinnichio, that will be classified as a zero
6 there; okay?

7 **THE PROBATION OFFICER:** Yes, Your Honor.

8 **THE COURT:** I'm not going to add a criminal history
9 point for that. So his criminal history points will be four
10 and not five in Paragraph 36, but that doesn't change the
11 guideline calculation.

12 **THE PROBATION OFFICER:** But should it remain in the
13 report?

14 **THE COURT:** It need not even remain in the report. It
15 can be deleted.

16 **THE PROBATION OFFICER:** Okay.

17 **THE COURT:** That's assault in the second degree and
18 PBJ, probation before judgment. It can be deleted from the
19 report. So that matter has been dealt with, Mr. Lawlor.

20 We'll get back to Number 2 in terms of the birthplace
21 of the defendant, whether it's Brooklyn, New York, or Jamaica.

22 But as to Paragraph 55 in the presentence report,
23 there is some reference, I think you said, to -- you objected
24 to the -- Mr. Byrd's mother being suggested as a co-defendant.
25 I don't know whether these paragraphs have been renumbered or

1 not, but I don't -- where is there reference to his mother
2 being a co-defendant?

3 **THE PROBATION OFFICER:** Your Honor, it's Paragraph 55,
4 and I believe what it should say is "the co-defendant in a
5 related case."

6 **THE COURT:** All right. I'm looking at paragraph --
7 which date of the presentence report are you referring to,
8 January the 11th?

9 **THE PROBATION OFFICER:** No. I might have the wrong
10 copy too, Your Honor.

11 **THE COURT:** I'm looking at the most recent one as
12 January the 11th of 2017, Ms. Spinnichio.

13 **MR. WARWICK:** It should be Paragraph 53, then, Judge.

14 **THE COURT:** Paragraph 53. The defendant's cousin,
15 Jerome Castle, is also a co-defendant. That will be -- clearly
16 the defendant's mother is not a co-defendant in this case, and
17 that will be deleted, Ms. Spinnichio.

18 **THE PROBATION OFFICER:** Yes, Your Honor. But I
19 believe she was in a related case, a case related to this case.

20 **THE COURT:** Is she a co-defendant in this case or not,
21 Mr. Warwick?

22 **MR. WARWICK:** No, she is not.

23 **THE COURT:** Good. Then I don't want any reference to
24 her being a co-defendant, Ms. Spinnichio.

25 **THE PROBATION OFFICER:** Okay. Okay.

1 **THE COURT:** So that will be granted as well,
2 Mr. Lawlor.

3 **MR. LAWLOR:** Thank you, Your Honor.

4 **THE COURT:** And then amending Paragraph 61, again, in
5 terms of the Part C, the defendant characteristics, Mr. Byrd
6 notes the following members of his family. And then there's a
7 list of names: Stacie Stewart, Najah Stewart, Andrea King,
8 Jamila Lynn, Yvonne Taylor, Lavonte King, Ashley Channing,
9 Anita Bush, Patrice Fulcott, Junior Saunders, Wayne Chang. All
10 of those should be added as members of his family at the
11 request of the defendant, Ms. Spinnichio.

12 **THE PROBATION OFFICER:** Yes, Your Honor.

13 **THE COURT:** And they will be added pursuant to your
14 request, Mr. Lawlor.

15 **MR. LAWLOR:** Thank you, Your Honor.

16 Your Honor, without belaboring the point, may I give a
17 couple additional names to the PSR author?

18 **THE COURT:** Absolutely. Go right ahead. Go right
19 ahead.

20 **MR. LAWLOR:** I'll do it now. Terrence Peters is one.
21 Clayanna Warthen, W-A-R-T-H-E-N. And Safiya, S-A --
22 S-A-F-I-Y-A, Lyn, L-Y-N.

23 Thank you, Your Honor.

24 **THE COURT:** Did you get all those, Ms. Spinnichio?

25 **THE PROBATION OFFICER:** No, Your Honor.

1 **THE COURT:** I don't think she got them.

2 **THE PROBATION OFFICER:** I'll get them after.

3 **THE COURT:** You'll just meet with her afterwards,
4 Mr. Lawlor, make sure she gets all of those.

5 Then there is material in Paragraph 62 and 64 with
6 respect to medication he's taking and also the matter of
7 sleep apnea. And your request is that that be added?

8 **MR. LAWLOR:** Yes, Your Honor.

9 **THE COURT:** And that will be added, Ms. Spinnichio.

10 **THE PROBATION OFFICER:** Yes, Your Honor.

11 **THE COURT:** And then, finally, before we -- we'll have
12 two matters left to deal with in a moment here.

13 In terms of employment record, which is actually at
14 Paragraph 69, it says the defendant did not provide employment
15 information. And you have noted that Mr. Byrd has been
16 self-employed in the promotion industry for 20 years.

17 **MR. LAWLOR:** Yes, Your Honor.

18 **THE COURT:** I think that issue came up previously when
19 counsel from Perkins Coie were seeking to show an independent
20 source of income in terms of my consideration of whether or not
21 they could come into the case and there were individual assets.

22 And Perkins -- for the record, Perkins Coie withdrew
23 from the hearing under United States versus Farmer and did not
24 want to try to come forward and meet that burden to show
25 independent source of income. But we can certainly list

1 Mr. Byrd's contention that he has been self-employed in the
2 promotion industry for 20 years, Ms. Spinnichio.

3 **THE PROBATION OFFICER:** Yes, Your Honor.

4 **THE COURT:** And that will be granted as well,
5 Mr. Lawlor.

6 **MR. LAWLOR:** Thank you.

7 **THE COURT:** So I think that where we are is the only
8 disputed matters as to the presentence report are the matter of
9 a two-level adjustment under Paragraph 25 of the presentence
10 report for alleged obstruction of justice under Section 3C1.1
11 of the Advisory Guidelines.

12 And then, secondarily, with respect to the presentence
13 report reflecting that Mr. Byrd is -- has an ICE detainer
14 lodged against him and that he was born in Jamaica and that he
15 entered this country on a visa in April of 1986, and the
16 presentence report reflects that there is an outstanding order
17 of deportation as to him.

18 Mr. Byrd, as you have indicated, contends that he is
19 not a United States -- that he is a United States citizen and
20 indicates that he was born in Brooklyn, New York.

21 We'll deal with this issue in a moment in terms of any
22 disputed matters that the Court must address under Guideline
23 Section 6A1.3 and Rule 32(i) of the Federal Rules of Criminal
24 Procedure. They will be the two matters I will address that
25 are disputed.

1 Are there any other disputed matters that we need to
2 address in a few minutes from your point of view, Mr. Warwick?

3 **MR. WARWICK:** I don't believe so, Your Honor.

4 **THE COURT:** In terms of the guideline calculation,
5 Mr. Lawlor, anything from your point of view?

6 **MR. LAWLOR:** No, Your Honor.

7 **THE COURT:** Just so the record is clear, this is a
8 Rule 11(c)(1)(C) plea with an agreed disposition and an
9 agreement by the Government and the defendant. But we still
10 must calculate the accurate Advisory Guideline range under
11 Fourth Circuit case law.

12 So with that, we are ready to proceed.

13 Let me just go over the process here for you,
14 Mr. Byrd, that I indicated to you on November the 2nd, five
15 days before your scheduled trial date in November when you pled
16 guilty.

17 There are two key Supreme Court opinions that govern
18 the Court with respect to sentencing here in this matter.

19 In the case of United States versus Booker, in January
20 of 2005, the Supreme Court of the United States upheld the
21 Constitutionality of the Federal Sentencing Guidelines, but it
22 did so with the deletion of two particular sections of the
23 guidelines which had previously rendered the guidelines
24 mandatory.

25 In the Booker case in 2005, now over 12 years ago, the

1 Court held that with the deletion of those two sections, the
2 balance of the guidelines was Constitutional. And the Court
3 recognized that as a result of its opinion, the Federal
4 Sentencing Guidelines were to be applied in an advisory context
5 and the guidelines had been rendered effectively advisory.

6 So there's nothing mandatory about the Federal
7 Sentencing Guidelines. They are advisory only.

8 And under the approach adopted by the Supreme Court in
9 the Booker case, federal judges, while not bound to apply the
10 guidelines, must still consult them and take them into account
11 when imposing a sentence, subject to review by Courts of
12 Appeals for unreasonableness.

13 And the particular section there, Section 3553 of
14 Title 18 of the United States Code, is a factor that the Court
15 considers as well when imposing a sentence. And it has, in
16 fact, been referenced by Mr. Lawlor in his submission to the
17 Court on your behalf, Paper No. 403.

18 And then I said there are two key Supreme Court
19 opinions. In the second of the two key Supreme Court opinions,
20 in the case of Gall versus the United States decided in
21 December of 2007, the Supreme Court specifically noted that
22 federal judges should not presume that the guideline range is
23 reasonable. But it is a starting point in a multistep process,
24 pursuant to which, first, there's a calculation of the
25 guideline range, which we're going to be doing in a moment; and

1 then there's a consideration of other factors apart from the
2 guidelines, the goal being to impose a sentence which is
3 sufficient but not greater than necessary to achieve the goals
4 of sentencing. And if the sentence is outside of the guideline
5 range, the Court should indicate its reasons for doing so.

6 That's the analysis I undertook early in terms of
7 determining that since you pled guilty on November the 2nd, in
8 the interim determining that a 26-year total sentence is
9 appropriate in this case -- and it indeed actually works out to
10 be within the Advisory Guideline range, but that's not the
11 reason for my holding. I think it's a fair and appropriate
12 sentence, but that's the analysis I undertook.

13 Now, I note that in Paragraph 64 of the presentence
14 report, you've indicated that you are taking some medication,
15 specifically Celexa and Prozac.

16 Did you take any medication today, Mr. Byrd?

17 **THE DEFENDANT:** No.

18 **THE COURT:** All right. And when is the last time you
19 took any medication, sir?

20 **THE DEFENDANT:** Bedtime last night.

21 **THE COURT:** Bedtime last night.

22 Is that causing any negative effect upon you here this
23 afternoon?

24 **THE DEFENDANT:** No. I'm fine.

25 **THE COURT:** I'm sorry?

1 **THE DEFENDANT:** I'm fine.

2 **THE COURT:** All right. And are you satisfied your
3 client is competent to proceed with sentencing here,
4 Mr. Lawlor?

5 **MR. LAWLOR:** Yes, I am.

6 **THE COURT:** Let me go over the other housekeeping
7 matter for you, Mr. Byrd.

8 They are the procedures required by the PROTECT Act of
9 2003, which is a law that was passed by the U.S. Congress in
10 that year. And among the many provisions of that act, there
11 are also provisions with respect to federal courts when
12 imposing sentences in federal criminal cases.

13 The PROTECT Act specifically requires that the
14 Chief Judge of each Federal Court in the United States ensure
15 that within 30 days of the imposition of sentence, that certain
16 documents go over to the U.S. Sentencing Commission in
17 Washington.

18 Those documents include the judgment and commitment
19 order, which I'll be preparing with the assistance of
20 Ms. Tyson, the Deputy Clerk of Court; the statement of reasons
21 for the sentence imposed, which shall include the reason for
22 any departures from the otherwise applicable guideline range;
23 any plea agreement in the case; the indictment, in this case
24 the second superseding indictment; the presentence report, and
25 any other information the Sentencing Commission finds

1 appropriate.

2 And the Chief Judge of this court issued an
3 administrative order back in 2003 directing Ms. Spinnichio's
4 office, the U.S. Probation Office, to submit these documents to
5 the U.S. Sentencing Commission in Washington over the next
6 30 days.

7 That means, Mr. Byrd, that some of these documents are
8 subject to review by other public officials or by members of
9 the public, perhaps. And in light of the fact, for a long
10 period of time in this court, the section marked "Defendant
11 Characteristics," which contains confidential family
12 information, has been sealed, for a long period of time this
13 court, certainly going back as far as 2004, pursuant to an
14 administrative order that was revised by standing order in
15 2015, pursuant to which Part C of the presentence report,
16 containing confidential family information, is sealed.

17 In your case your presentence report, Part C, begins
18 in Paragraph 52, Page 13, and goes over to Paragraph 70,
19 Page 15. And the standard sealing order will apply there. I
20 have reviewed the confidential family information. Another
21 judge of this court could do so as well if they so desired.
22 They have not, but they could if they wanted to.

23 And then members of the U.S. Sentencing Commission in
24 Washington can review that material, but no one else is allowed
25 to see it. The President, members of the Senate and House of

1 Representatives cannot look at it without further order by me.

2 Do you understand that?

3 **THE DEFENDANT:** Yes, Your Honor.

4 **THE COURT:** All right. And I'm not going to --
5 there's no reason it will be unsealed. To all other extent,
6 the requirements of the PROTECT Act are still complied -- are
7 still required to be complied with.

8 Now, I said that the first step in the guideline
9 calculation is the determination of the total offense level.
10 That is reflected on Pages 7 and 8 of your presentence report.

11 There is a base offense level of 36. There is a
12 four-level upward adjustment because you were an organizer or
13 leader of the criminal activity that involved five or more
14 participants. That comes to a total offense level of 40
15 initially.

16 There is a two-level adjustment for obstruction of
17 justice in Paragraph 25 -- and that's an issue you're
18 disputing, and I'll address it in a moment -- which would take
19 it to a 42. Then you're being given a two-level downward
20 adjustment for your acceptance of responsibility, for a total
21 offense level of 40.

22 Your criminal history is summarized in page -- from
23 Pages 8 to 10, noting a handgun charge when you were 17 years
24 of age in 1992, a drug charge in 1993, another drug charge in
25 1998. The assault in the second degree charge was stricken by

1 the Court based upon your representation that it was not you.

2 There's a total criminal history points of four as
3 reflected in Paragraph 36, with a criminal history
4 category of III. I have looked -- I have seen Pages 10, 11,
5 and half of Page 12 as to other alleged criminal conduct. I'm
6 not considering that in any way in accepting the (C) plea with
7 respect to an agreed sentence of 26 years, so they're not a
8 factor in my decision in that regard.

9 So as I've said, there is a requirement for me to
10 determine certain disputed matters, if there are any, under
11 Rule 32 of the Federal Rules of Criminal Procedure and
12 Section 6A1.3 of the Advisory Guidelines.

13 The first disputed matter relates to Paragraph 25 as
14 to an addition, a two-level upward adjustment for obstruction
15 of justice on that.

16 Let me just ask the Government, if I can, Mr. Warwick,
17 I know that you've made reference to my rulings at the motions
18 hearing in August of 2016, particularly with respect to any
19 evidence as to Mr. Byrd's interactions or his effort at
20 interactions with Mr. James Bowie, a co-defendant in this case.

21 But in light of the fact that this is a (C) plea under
22 Rule 11(c)(1)(C), looking at the statement of facts that
23 provided the predicate for this Court's acceptance of that
24 (C) plea, I don't know that there's any reference to the matter
25 of the interaction with James Bowie. And I'm not sure if it's

1 of any great moment here in terms of this Court's determination
2 to just abide by the (C) plea.

3 So I'd be glad to hear from the Government before I
4 hear from Mr. Lawlor on this.

5 You may be seated, Mr. Byrd. Thank you.

6 **MR. WARWICK:** As a practical matter, the Court can
7 either just ignore it or discount it and just proceed with the
8 (C) plea. Or if the Court wants amplification, I can do that
9 in a minute.

10 **THE COURT:** I don't think you need to. I'm not
11 comfortable with that adjustment. I'm not criticizing
12 Ms. Spinnichio.

13 But in light of the fact that this is a (C) plea --
14 and as I've earlier noted, Mr. Byrd under oath acknowledged the
15 facts that were the factual predicate for that (C) plea -- I
16 don't know that that factual predicate included the information
17 as to Mr. Bowie. And I'm inclined, in the abundance of
18 caution, to strike that so that that two-level upward
19 adjustment will not be provided.

20 And Ms. Spinnichio, if you'll delete that obstruction
21 of justice adjustment.

22 **THE PROBATION OFFICER:** Yes, Your Honor.

23 **THE COURT:** And so that will be sustained. The
24 objection will be sustained. That results in a total offense
25 level of 38, criminal history category of III, an Advisory

1 Guideline range of 292 to 365 months in prison.

2 Indeed, the agreed sentence of 312 months, or 26
3 years, falls in that range, actually to the low end of that
4 range. But that is the Advisory Guideline range at this point.

5 And then the second disputed matter I need to address,
6 that is the matter of the defendant's contention that he was
7 born in Brooklyn, New York, and the position of the
8 Immigration & Customs Enforcement, apparently, that he was born
9 in Jamaica and that there is a detainer lodged against him.

10 From the point of view of the Government and from the
11 defense -- I'll hear from the Government first on this. I'm
12 not really inclined to deal with this one way or the other.
13 The defendant is free to deal with this as an immigration
14 matter at some point in time.

15 Yes, Mr. Warwick?

16 **MR. WARWICK:** Yes. He's allowed to do that. Just
17 clarifying for the record, Mr. Byrd was born in Jamaica. What
18 we did, specifically in anticipation of this issue, when
19 somebody comes into the U.S. who is a noncitizen, they are
20 given an alien number and they are fingerprinted.

21 So we got the alien or A file from the Department of
22 Homeland Security. And we had the prints in that file for
23 Mr. Byrd when he was a teenager, compared with two arrests.
24 One was a Baltimore County arrest September of 1992, as well as
25 the U.S. Marshals arrest in this case, and it's one and the

1 same person.

2 **THE COURT:** All right.

3 **MR. WARWICK:** So I just wanted --

4 **THE COURT:** You can introduce that as an item -- that
5 will be Government's Exhibit 1 on this question.

6 **MR. WARWICK:** Yes, Your Honor. And I just didn't want
7 the probation report --

8 **THE COURT:** I understand.

9 Mr. Lawlor, do you want to be heard on this?

10 **MR. LAWLOR:** No, Your Honor.

11 **THE COURT:** Mr. Byrd is free to contend that he was
12 born in Brooklyn, New York. And to the extent that there is
13 any effort to deport him at the end of his prison sentence,
14 he's -- I'm not going to conduct an inquiry here on that. I
15 mean, this presentence report you've objected. You've noted
16 your objection to reference to his being born in Jamaica. The
17 Government has offered a document in support of it.

18 You're free to offer whatever you want. Or Mr. Byrd
19 is free to contend he was born in Brooklyn, New York. And it
20 doesn't really -- it's not going to affect the sentence imposed
21 here. It's a matter to be dealt with by immigration officials
22 fairly far down the road, as far as I can see.

23 Is there anything else you want to add on this?

24 **MR. LAWLOR:** No, Your Honor.

25 **THE COURT:** All right. And I'm looking here at the

1 Government's Exhibit 1 on this question. And I'm not making a
2 finding one way or the other on it, and I don't need to.

3 Madam Clerk, thank you very much.

4 And the evidence is what it is, and the presentence
5 report stays as is on that matter. But it does not mean that
6 the defendant is not free to contend it at a later point in
7 time when he's being released from prison with respect to
8 immigration officials.

9 But the presentence report states and the Government
10 has offered evidence to support the fact that apparently there
11 is an immigration detainer on Mr. Byrd that still exists.

12 So with that, there are no other disputed matters that
13 I know of to address, and I'll now give the Assistant
14 U.S. Attorney an opportunity to speak on behalf of the
15 Government.

16 And then, Mr. Lawlor, you'll be recognized for
17 remarks.

18 And then, Mr. Byrd, you'll be given an opportunity to
19 speak on your own behalf.

20 So with that, Mr. Warwick, I'll be glad to hear from
21 you.

22 **MR. WARWICK:** Thank you, Your Honor.

23 This case has had a long and torturous history. It's
24 a very serious matter. It's one of the largest drug
25 organizations I have been involved with in terms of

1 investigating and prosecuting.

2 We've had the support of law enforcement in Maryland,
3 in Texas, in Arizona, and elsewhere. And putting this case
4 together was a significant effort, but it was worth it because
5 of the complexity and magnitude of the drug operation and the
6 organization maintained by Mr. Byrd.

7 The agreed -- the stipulated sentence -- and I ask the
8 Court to agree by the -- agree with counsel and adopt our
9 request. I think a sentence of 26 years is sufficient, and
10 hopefully that will be followed by deportation, and that
11 sentence to run concurrent with the ten years on the
12 money-laundering count.

13 If the Court has any questions, I'll be happy to
14 answer them.

15 **THE COURT:** No. That's fine. Thank you.

16 The statement of facts, which was set forth in Pages 5
17 and 6 of the plea agreement, as to which Mr. Byrd acknowledged
18 under oath before me on November the 2nd, I think is
19 self-explanatory in terms of the depth of this organization and
20 the implications of it.

21 With that, I'll be glad to recognize you, Mr. Lawlor.
22 As I've said, I'll certainly abide by the plea agreement that
23 your client reached with the Government on November 2nd, but
24 I'll be glad to hear from you if you want to add anything.

25 **MR. LAWLOR:** I do not, Your Honor. Understanding that

1 this is an agreed-upon sentence, I'd just ask the Court to
2 consider the comments we made in the letter dated January 23rd.

3 **THE COURT:** Yes. And certainly I intend to address
4 his concern over posttraumatic stress disorder, as well as his
5 desire for mental health treatment. And I will certainly do
6 that. And certainly Mr. Byrd is going to get credit for all
7 time served in federal custody since his arrest by authorities
8 in Arizona back on April 29th, 2014.

9 So he has already served, as I've said, some two and a
10 half years, going on almost three years of the sentence. And
11 you're getting full credit for that, Mr. Byrd. All the time
12 you spent thus far is being credited against your sentence.

13 So with that, if you'll please stand. I personally
14 address you and determine if you wish to make a statement and
15 give you the opportunity to speak on your own behalf.

16 Would you like to make a statement, sir?

17 **THE DEFENDANT:** Statement I already made -- I pretty
18 much already made, Your Honor.

19 **THE COURT:** All right. That's fine. Thank you very
20 much.

21 The Court has conducted the analysis under the Booker
22 and Gall cases, as I -- remain standing, please, sir.

23 The Court has conducted the analysis under the Booker
24 and Gall cases, as I've previously outlined. And the sentence
25 imposed should achieve the four Congressionally mandated

1 purposes of sentencing -- that is, to punish the defendant, to
2 deter the defendant and others from criminal conduct, to
3 incapacitate the defendant and protect the public, and to
4 rehabilitate the defendant.

5 These steps were outlined by the United States Court
6 of Appeals for the Fourth Circuit in United States versus Raby,
7 R-A-B-Y, at 575 F.3d 376, a Fourth Circuit opinion in 2009.

8 To achieve these four purposes, I have looked at the
9 seven factors under 18 United States Code, Section 3553(a), and
10 specifically the nature and circumstances of the offense in
11 this case and the conduct of the defendant, specifically.

12 I have also looked at the guideline range here with
13 respect to the guideline range, which it turns out is exactly
14 in the range of the agreed (C) plea sentence here.

15 And I have certainly noted not only the nature and
16 circumstances of the offense, but the history and
17 characteristics of this defendant. And indeed the Court has
18 applied those factors.

19 And I'm very much aware of the early issue that we
20 addressed here about alternative sources of income, which
21 ultimately the lawyers were not able to establish in terms of
22 in the auspices of the case of United States versus Farmer in
23 terms of the fact that you have clearly financed a significant
24 drug operation for a long period of time.

25 And I've considered not only the nature and

1 circumstances of this offense and the characteristics of the
2 defendant, but also, under 3553(a)(6), the sentences imposed
3 upon similarly situated individuals, in considering the
4 propriety of a total sentence of 26 years.

5 So I find that it's sufficient but not greater than
6 necessary to achieve the goals of sentencing under both the
7 factors under 3553(a), as well as under the Advisory Guideline
8 calculation.

9 (It is the policy of this court that every guilty plea and
10 sentencing proceeding include a bench conference concerning
11 whether the defendant is or is not cooperating.)

12 **THE COURT:** It is ordered that the defendant,
13 Richard Byrd, be remanded to the custody of the Bureau of
14 Prisons for a period of 312 months on Count 1 and 120 months on
15 Count 2, concurrent to Count 1, for a total sentence of
16 312 months, with credit for time served in federal custody
17 since April 29th, 2014.

18 I'm going to recommend that he receive psychological
19 counseling and mental health treatment while he's incarcerated.

20 I'm going to recommend that he participate in any drug
21 abuse program for which he may be eligible.

22 I'm also going to recommend that he receive some
23 vocational training while he's incarcerated, because the only
24 indication of employment is his assertion that he's been in the
25 promotion business. He doesn't have any employment other than

1 his suggestion as to that, and that fell deficient earlier in
2 these proceedings when Perkins Coie was trying to perhaps enter
3 their appearance in this case.

4 Mr. Byrd is before this Court facing sentencing for
5 being the leader of a large drug-trafficking enterprise and
6 amassed quite a significant amount of money from this
7 participation. And I've already entered certain forfeiture
8 orders consistent with the plea agreement in this case.

9 But I do think that the sentence at the lower end of
10 the Advisory Guideline range -- that's 312 months total -- is
11 an appropriate sentence.

12 I'm going to place you on supervised release,
13 Mr. Byrd, upon your release from prison, for a period of
14 ten years as to Count 1 and three years as to Count 2,
15 concurrent to Count 1, for a total term of supervised release
16 of ten years.

17 The mandatory and standard conditions of supervision
18 adopted by the Court shall apply and the following additional
19 conditions:

20 That you shall satisfactorily participate in a
21 treatment program approved by the probation officer relating to
22 substance and/or alcohol abuse, which may include evaluation,
23 counseling, and testing as deemed necessary by the probation
24 officer.

25 Secondly, that you shall satisfactorily participate in

1 a mental health treatment program approved by the probation
2 officer, which may include evaluation, counseling, and testing
3 as deemed necessary.

4 Third, that you shall provide the probation officer
5 with access to any requested financial information.

6 Fourth, that you shall not have any contact with any
7 victim or witness in the instant offense by any means,
8 including in person, by mail, by telephone, or via any device
9 or Internet or any other social media device in terms of trying
10 to contact any witnesses who you believe were involved in this
11 case.

12 And, fifth, you shall cooperate in the collection of
13 any DNA as directed by the probation officer if it were deemed
14 necessary.

15 And they are conditions of supervised release when
16 you're released after your prison term.

17 I am not going to impose a fine in this case. You've
18 already had a very substantial forfeiture order and money
19 judgment entered against you, consistent with Paragraph 9 of
20 the plea agreement, which was introduced as
21 Government's Exhibit 1 at the time you pled guilty on
22 November the 2nd, so no fine will be assessed.

23 There is a special assessment of \$100 per count as to
24 the second superseding indictment, so there's a \$200 mandatory
25 special assessment. That will just be listed as being paid

1 immediately. But, in fact, it will just be deducted from your
2 prison wages.

3 In Paragraph 16 of the plea agreement, you and the
4 Government waived any appeal of the sentence in this case by
5 the agreed sentence under Rule 11(c)(1)(C) of 312 months. And
6 that's the sentence that has, in fact, been imposed.

7 But if you did want to note an appeal, you should do
8 so within 14 days of the entry of the judgment and commitment
9 order in this case, pursuant to Rule 4(b) of the Federal Rules
10 of Appellate Procedure.

11 Mr. Lawlor, you do not need to notify the Court, but
12 you should make sure your notes to your file reflect your
13 discussions with your client in that regard, presumably based
14 upon his representation here and his adoption of the submission
15 submitted last night by Mr. Jamison and his oral adoption of
16 that here today that he'll want to file an appeal.

17 Pursuant to 18 United States Code, Section 3006A,
18 Mr. Byrd, if you cannot afford an attorney to represent you, an
19 attorney can be appointed to represent you.

20 In that regard, Mr. Lawlor, in light of the
21 representations here today, Ms. Maureen Essex, our Criminal
22 Justice Act Panel Coordinator, is here and if you can talk with
23 her tomorrow so that Mr. Byrd understands that he has a
24 deadline for filing an appeal in this case.

25 And if he chooses to retain private counsel, that's

1 fine. If he doesn't, we need to make sure we get
2 court-appointed counsel appointed for him so that a
3 court-appointed lawyer, who would, in fact, then be the fourth
4 court-appointed lawyer in this case, would be able to file the
5 paperwork for him. Because I think in light of his
6 representations as to you, that if he wants court-appointed
7 counsel, yet another lawyer --

8 **MR. LAWLOR:** Your Honor, just for the record, what
9 I'll do is I will note the appeal.

10 **THE COURT:** Okay. Just do it right away.

11 **MR. LAWLOR:** And then I'll move to withdraw in the
12 Fourth Circuit, and they will appoint someone without a
13 conflict.

14 **THE COURT:** That's fine.

15 And you just coordinate that with Ms. Essex, who's
16 here in court, just so we cover that base.

17 That way, Mr. Byrd, if you have another
18 court-appointed lawyer, which will be Number 4 -- but if you
19 can get a private lawyer to represent you, that's fine. And
20 Mr. Lawlor will file an appeal with you -- with the court on
21 your behalf within the next 24 hours.

22 So thank you very much.

23 Is there anything further from the point -- well,
24 there's one other further matter here.

25 Is there anything further, Mr. Warwick, from your

1 point of view?

2 **MR. WARWICK:** No, Your Honor. The Court has already
3 signed a preliminary order of forfeiture.

4 **THE COURT:** Yes.

5 **MR. WARWICK:** I will submit the final order once the
6 publications have been made for certain properties.

7 **THE COURT:** That's fine. I think that you -- as to
8 that, that may have to be stayed pending the appeal filed by
9 Mr. Byrd. We'll have to see how that works.

10 **MR. WARWICK:** One doesn't --

11 **THE COURT:** I think you need to wait until he gets a
12 new lawyer, because to the extent that there are assets that
13 are marked as forfeiture, he is challenging -- he's essentially
14 saying that nothing was correct or truthful when he testified
15 on November the 2nd.

16 So to the extent that there's any forfeiture order
17 that flows from it -- you certainly can file it. But what I'm
18 saying is I think it's going to have to await the resolution of
19 the appeal in this case when he files the appeal.

20 Anything further from the point of view of the
21 Government?

22 **MR. WARWICK:** No, Your Honor. Thank you.

23 **THE COURT:** Mr. Lawlor, anything further, sir?

24 **MR. LAWLOR:** Yes, Your Honor.

25 I'd ask the Court to recommend that Mr. Byrd be

1 designated by the Bureau of Prisons at the FCI in Miami or the
2 FCI in Fairton, New Jersey.

3 **THE COURT:** All right. I'll recommend FCI -- hold on
4 one second. Which one is his first choice?

5 **MR. LAWLOR:** Miami.

6 **THE COURT:** All right. I'll recommend FCI Miami.

7 **MR. LAWLOR:** Or Fairton, New Jersey would be --

8 **THE COURT:** Or in the alternative, Madam Clerk,
9 Fairton, New Jersey; FCI Fairton, New Jersey.

10 **MR. LAWLOR:** Can you also indicate, Your Honor, that
11 Mr. Byrd has an enemy at Fort Dix and that he not be designated
12 there?

13 **THE COURT:** Yes, I'll do that as well, if you want to
14 stay after for a few minutes. Just give that note to
15 Ms. Tyson.

16 Ms. Tyson, we're going to wind up probably doing this
17 first thing in the morning.

18 **THE CLERK:** Yes, Your Honor.

19 **THE COURT:** But we'll make sure that -- definitely not
20 Fort Dix. I will do that.

21 **MR. LAWLOR:** And lastly, Your Honor, Mr. Byrd has
22 asked me to submit, I suppose, as Defendant's Exhibit 1 in
23 support of his motion to withdraw the guilty plea his phone log
24 from CTF, which would indicate his efforts to call certain
25 lawyers prior to --

1 **THE COURT:** That's fine. That will be introduced as
2 Defendant's Exhibit 1. That will be introduced into evidence.

3 **MR. LAWLOR:** And that's it, Your Honor.

4 **THE COURT:** Hold on one second here.

5 Anything else, Mr. Lawlor?

6 **MR. LAWLOR:** No, Your Honor.

7 **THE COURT:** All right. Just with that, just one other
8 matter, if counsel will just stand by.

9 Mr. Byrd, be seated for a minute here, if you will,
10 sir.

11 You may be seated, Mr. Lawlor.

12 Mr. William Bond, I believe, is in the courtroom. He
13 had originally filed some matters.

14 Mr. Bond, good afternoon to you.

15 Just -- I'll be entering a memorandum order to the
16 following effect:

17 On October 19th, 2015, this Court allowed movant,
18 William Bond, to intervene in this case, meaning specifically
19 that he would be listed on the docket in this case, because he
20 had an interest in it.

21 And both prior to and since that decision, Mr. Bond
22 has repeatedly sought to unseal certain portions of the record
23 in this case.

24 Now pending before this Court is Mr. Bond's sixth
25 motion to intervene, filed on November 7th, 2016, by an amended

1 third letter to intervene, Paper No. 405, dated January 24th,
2 2017. He again renewed his request for unsealing.

3 And then in an e-mail to chambers dated January 25th,
4 2017, he requested that the Court hold in abeyance these
5 motions pending Mr. Byrd's sentencing.

6 Mr. Bond is a member of the public. He's entitled to
7 be kept advised of what occurs here in court, and so I
8 permitted him that courtesy.

9 I am mindful of the public's right of access to
10 judicial proceedings. The Fourth Circuit's most recent opinion
11 on that, I think, is Doe versus Public Citizen, 749 F.3d 256, a
12 Fourth Circuit opinion in 2014.

13 And I have considered Mr. Bond's many submissions and
14 have weighed the competing interest in this matter in terms of
15 the matter of certain portions of the record that are under
16 seal and will remain under seal.

17 So having considered all of those, under the Virginia
18 Department of State Police versus Washington Post case,
19 386 F.3d 567, a Fourth Circuit opinion in 2004, the records
20 that are sealed shall remain sealed.

21 So it is ordered this 9th day of February, 2017, that
22 the pending motions filed by Mr. Bond, 276, 385, and 405, are
23 denied. To the extent that any other submissions filed by
24 Mr. Bond may be construed as motions, they are similarly
25 denied.

1 Mr. Bond is free to seek review of this memorandum
2 order by the United States Court of Appeals for the
3 Fourth Circuit, which has noted that mandamus and not appeal is
4 the preferred method of review for those orders restricting
5 access to criminal proceedings.

6 And the key case on that is Baltimore Sun Company
7 versus Goetz, 886 F.2d, Page 60, and discussion, Page 63,
8 Fourth Circuit opinion in 1989.

9 And so, Madam Clerk, I've signed an order to this
10 effect, and that order will be filed.

11 And I think that concludes all matters before this
12 court as to Mr. Byrd. Is there anything further from the point
13 of view of the Government?

14 **MR. WARWICK:** No, Your Honor. Thank you for your
15 time.

16 **THE COURT:** Anything further from the point of view of
17 the defense?

18 **MR. LAWLOR:** No, Your Honor.

19 **THE COURT:** This court stands adjourned.

20 (Court adjourned at 4:26 p.m.)

21 I, Douglas J. Zweizig, RDR, CRR, do hereby certify that
22 the foregoing is a correct transcript from the stenographic
record of proceedings in the above-entitled matter.

23 _____
/s/

24 Douglas J. Zweizig, RDR, CRR
25 Registered Diplomat Reporter
Certified Realtime Reporter
Federal Official Court Reporter
DATE: April 17, 2017

Douglas J. Zweizig, RDR, CRR - Federal Official Court Reporter

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